

ARTICLE 7

BILL OF RIGHTS

Section 1. Polygraph Tests.

No employee shall be required to subject himself/herself to a polygraph examination. No disciplinary action shall be taken against any employee for refusal to submit to a polygraph examination; however, if the employee consents to a polygraph examination, the polygraph examination results shall not be used or offered in any court proceeding.

Section 2. Electronic Surveillance.

Neither the Employer, the Association nor employees shall utilize any type of electronic surveillance device to record or transcribe any conversation between the Employer, the Association and/or the employee(s) unless disclosure of such device is made prior to such conversation, except those telephone or radio communications which are routinely recorded and/or monitored as part of the daily operation of the Department or except upon the authority of a court-authorized warrant. This provision shall not apply to criminal investigations.

Section 3. Right to Sue.

Any employee shall have the right to bring civil suit against any citizen, organization, or corporation for injuries or damages suffered, either pecuniary or otherwise, for abridgement of his/her civil rights arising out of the employee's proper performance of official duties. The employee shall advise his/her post or division commander of intent to bring said suit, and may consult with said post or division commander concerning said suit.

Section 4. Personnel Files.

Any employee shall have the right to inspect his/her official personnel file, upon written request during the normal business hours, Monday through Friday (excluding holidays). The employee's official personnel file shall not be made available to any person or organization other than the Employer without the employee's express written authorization unless or pursuant to a court order. The "Bullard-Plawecki Employee Right to Know Act" (1978 PA 397) shall be applicable to and govern any disputes with reference to maintenance of personnel files, and access thereto.

Section 5. Investigatory Interview.

Whenever any employee is subjected to an interview by any Department

personnel for reasons that could lead to disciplinary action as defined in Article 8, Discipline, of this Agreement, such interview shall be conducted under the following conditions:

- a. The employee shall be fairly apprised in writing of the nature of the investigation, and the fact that the investigation does not entail criminal charges. The written notice shall indicate, to the extent then known by the employer:
 - (1) The name of the person making the complaint or the victim of the alleged wrongdoing, unless, at the sole discretion of the Employer, it would substantially impede the investigation or adversely affect any requested anonymity of the complainant;
 - (2) The dates (or time frame) of the alleged misconduct;
 - (3) Description of the facts alleged by the complainant to constitute the misconduct.
- b. The employee shall be advised of the employee's right to have an employee representative present during any questioning and given a reasonable opportunity to obtain such representation. Wherever practicable, the employee shall be given 48 hours advance notice of the questioning.
- c. At the time a formal disciplinary investigatory interview is scheduled, in addition to being advised of the right to have a representative present, the employee shall be advised orally whether the allegation may result in a criminal prosecution and whether the employee is then considered to be a principal or witness. The employee shall be given sufficient pertinent information about the allegations to enable a reasonable person to identify the incident (if it in fact occurred), and to review his or her daily report, notes, official investigative report or otherwise refresh his or her memory regarding the matter.
- d. The interview shall be conducted at a reasonable hour, preferably, but not necessarily, limited to when the employee is on duty. If such questioning occurs during nonduty hours of the employee involved, the employee shall be considered to be on duty for the purposes of compensation.
- e. The employee, at his/her request, shall have the right to have an Association representative present during such interview. In such cases where such Association attendance is requested, the interview may be postponed for the purpose of securing an Association representative up to the afternoon of the day following the notification of interview.

- f. The presence of an Association representative will in no way, in and of itself, jeopardize either the employee's or the Association representative's continued employment.
- g. The supervisor/investigator is free to insist on hearing the employee's own account of the matter under investigation. The supervisor/investigator is not obligated to negotiate with the employee or the representative during the investigatory interview. The purpose of the interview is to seek evidence or facts to support a decision. The supervisor/investigator is entitled to ask questions of the employee and to hear the employee's own uninterrupted answer.
- h. The Association representative's role at the investigatory interview is to consult with the employee and to observe the propriety of the interview and not to interrupt, interfere with or otherwise obstruct the investigation. The Association representative shall be given the opportunity to assist the employee by asking questions to clarify the facts or to provide the names of other witnesses who possess knowledge of the facts.
- i. The employee under investigation shall be informed of the nature of the investigation prior to any questioning. If it is known that the employee is a witness only, he/she shall be so advised.
- j. The interview shall be for reasonable periods of time and time shall be permitted for personal necessities, provided that no period of continuous questioning shall exceed one (1) hour without a ten-minute rest period, without the employee's consent.
- k. The employee shall not be subjected to abusive language, questioning by more than one supervisor/investigator at a time, or to threats or promises to induce an answer to any question.
- l. The employee's name, home address or photograph shall not be given to the press or news media without the employee's express consent, and his/her name shall only be released upon the proffering of formal criminal charges.
- m. If a tape recording is made of the interview, the employee, or representative authorized by the employee, shall have access to the tape, or be given an exact copy thereof, at any time upon reasonable request. If the employee's statement is reduced to writing, the employee or representative authorized by the employee, shall be given an exact copy of said statement upon request.
- n. If any employee is represented by another employee who is on duty status, that duty status shall continue until the interview is completed.

- o. In no event, except at the employee's request, will the interview take place at the employee's home.
- p. No interview conducted hereunder on behalf of the Employer shall be conducted by an employee in the bargaining unit.

It is not the purpose of this Section to prevent discussions between employees and their superiors with regard to work assignments, or to require representation of the employee during the administration of "Affirmative Assistance" pursuant to Article 8 of the Discipline provisions of this Agreement, or to require representation when the employee is interviewed solely as a witness. Opportunity for Association representation shall, however, be provided upon request, where either the employee reasonably believes he/she will be disciplined for his/her conduct, the supervisor/investigator believes that a reasonable basis for discipline may exist, or the supervisor/investigator has been directed to make a report, or intends to make a report, to a superior officer which could lead to discipline of the employee.

If, in the course of any routine inquiry, the supervisor/investigator forms a belief that a reasonable basis for discipline exists, he/she shall forthwith so inform the employee, and permit the employee an opportunity to request the presence of an Association representative. In any instance where the supervisor/investigator advises the employee that his/her inquiries will not lead to discipline, no representation is required.

Section 6. Criminal Investigation.

In a criminal investigation interrogation, the employee under investigation shall be informed of the rank, name, and command of the officer in charge of the investigation, the interrogating officer and all persons present during the interrogation. The employee under investigation shall be informed of the nature of the investigation prior to any interrogation and, where applicable, he/she shall be informed of the name(s) of the complainant. Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary. The employee shall have the same right to Association representation as an employee under disciplinary investigation, or the right to representation by individual counsel; provided, however, that a criminal investigation and interrogation shall be conducted in the same manner and procedure, with the same constitutional and statutory safeguards, that all citizens under criminal investigation and interrogation are entitled to enjoy and exercise.

Section 7. Conclusion of Investigation.

An employee will be informed in writing when an investigation conducted pursuant to Section 5 of this Article is complete and of the determination.

Association representation is not required at any meeting where the sole purpose of which is to inform the employee of a previously made decision to administer disciplinary action. A copy of such memorandum shall be placed in his/her official personnel file. However, personnel complaints arising after the effective date of this Agreement, determined to be unfounded after investigation and/or final adjudication, shall not be retained in the employee's personnel file.

Section 8. Written Memoranda.

If there is a need for an inquiry into an employee's official actions or activities either as a principal or as a witness so that there will be a recording of facts for the protection of the employee or of the Department, or to rebut, explain or clarify any allegations, criticism or complaints made against an employee, under such circumstances the employee may be required and is expected to properly respond in a truthful and complete manner, and if requested, submit written memoranda detailing all necessary facts. However, in instances where the employee's conduct is under investigation, no employee shall be required to submit such report without first having the opportunity to confer with an Association representative.

Section 9. Line-up.

No employee shall be required as a condition of employment to stand in any line-up. This provision is not applicable where the employee is the subject of a criminal investigation.

Section 10. Compulsory Statements (Garrity Rule).

If the matter under investigation could lead to criminal charges, but the departmental inquiry is not directed at obtaining inculpatory statements from an employee to be utilized in criminal proceedings against that employee, but is merely for the purpose of determining the employee's continued status with the Department, the employee shall be advised that the employee's constitutional rights prohibit coerced statements obtained under threat of discharge from use in subsequent criminal proceedings against him/her. When the Employer advises the employee that such statements given will not be used against him/her in any subsequent criminal proceedings, the employee shall also be advised that:

- a. The employee has the right to counsel or Association representation during questioning;
- b. The presence of counsel or an Association representative will in no way, in and of itself, jeopardize his/her continued employment;
- c. The employee is required to fully and truthfully answer the questions or be subject to discharge.

Section 11. Denial of Representation.

If an employee requests and is denied representation, when he/she is entitled to same, the employee may:

- a. Refuse to answer any questions or write any memorandum until representation is permitted. Such refusal shall not result in any separate disciplinary action against the employee.
- b. Respond to said questions. However, said responses may not thereafter be used against said employee in any proceedings without his/her consent, and shall not be part of any official file retained by the Employer.
- c. Take whatever other action or remedies are available under this Agreement.

Section 12. Representation in Civil Litigation.

- a. Whenever any civil action is commenced against any employee alleging negligence or other actionable conduct, if the employee was in the course of employment at the time of the alleged conduct and had a reasonable basis for believing that the conduct was within the scope of the authority delegated to the employee, the Employer shall, at its option, pay for or engage or furnish the services of an attorney to advise the employee as to the claim and to appear for and represent the employee in the action. No such legal services shall be required in connection with prosecution of a criminal suit against an employee. Nothing in this Section shall require the reimbursement of any employee or insurer for legal services to which the employee is entitled pursuant to any policy of insurance.
- b. The Employer may also indemnify an employee for the payment of any judgment, settlement, reasonable attorney fees or court costs where the employee is found to have committed an intentional tort, if the employee's intentional conduct occurred while fulfilling his/her necessary duties and functions and was carried out pursuant to a direct order of his/her supervisor, was conduct required by the direct order, or was conduct in keeping with well-established and approved past practices of the Department; provided, the employee shall have the right to select counsel of his/her own choosing, with mutual agreement with the Employer.

Section 13. Prohibited Discrimination.

The parties agree that this Agreement shall be applied without unlawful discrimination as to race, color, national origin, religion, sex, age, handicap or political affiliation. Claims that allege violation(s) of the Americans with Disabilities Act (ADA) may be processed through Step 3 of the grievance procedure provided in Article 9, without prejudicing the employee's right to file suit or other procedures established by law. Any other employee(s) charges of employment discrimination shall be handled exclusively by and through the appropriate State or Federal agencies, or through appropriate judicial proceedings.

Section 14. State/National Constitutional or Statutory Rights.

Nothing contained in this Agreement shall deny any employee any right or benefit extended to him/her under the Constitution or any laws of the United States or the State of Michigan. Claims or assertions of such rights, however, shall not be brought under the grievance procedures set forth in this Agreement, except as provided in Section 13 above.

Section 15. Political Activity.

Employees covered by this Agreement shall have the same rights, privileges and immunities as all other citizens of the United States and of the State of Michigan, to engage in the political process, run for public office or otherwise express his/her personal views so long as said activities are not engaged in during duty hours of the employee, do not interfere with the performance of all duties and functions and/or the operation of the Employer, do not utilize any equipment or facilities of the Employer and are in keeping with the Constitution of the State of Michigan and Civil Service Commission regulations and requirements for all other State employees.

Section 16. Conduct Toward Superiors.

Employees in the bargaining unit shall conduct themselves in an orderly and respectful manner when addressing their superior officers and shall in return receive fair and courteous treatment from their superiors.

Section 17. Locker Searches.

Lockers are for personal use only and employees shall not place any official police reports, documents or evidence in their lockers.

In the event an employee places a needed police report, documents or evidence in the employee's locker, the employee may be recalled, without compensation, to retrieve such report, document or evidence.

Except upon the showing of an imminent emergency (bomb threat, fire, et cetera), the lockers of employees may not be searched except:

- a. By authority of a validly issued search warrant;
- b. By written consent of employee.

There shall be no general searches of lockers under any guise, except as heretofore indicated, including the guise of general inspections of department premises.

Any evidence obtained by the Department in violation of this Section may not be used by the Department in any disciplinary action brought against any employee.

Section 18. Limitation.

Disciplinary action shall be proposed, and written notice to the employee provided, within ninety (90) days of the occurrence or the Employer's knowledge of the occurrence giving rise to the disciplinary action, whichever occurs last, except that this limit shall be tolled during any periods of time that the employee is the subject of active criminal investigation or prosecution. However, nothing contained herein shall preclude the Employer from using such prior employee conduct during any disciplinary proceeding or from using such conduct to demonstrate a course of unsatisfactory performance or conduct.

Written notice of the proposed disciplinary action may be provided either (1) by personal service to the employee, or (2) by mailing the notice to the employee at his/her address of record, by certified mail with return receipt requested, on or before the expiration of the above time limitation.

Should the certified mail receipt be returned without the employee's signature, the Employer shall provide personal service to the employee. However, so long as the notice was mailed as described above prior to the expiration of the 90-day time period, the Employer shall have met its notice obligation.

Section 19. Complaints Against Supervisors.

In the event an employee has a complaint against a supervisor, where no other remedy is provided for by this Agreement, the employee may use any procedure provided by law.